

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION FOR COMMISSION APPROVAL TO MERGE)	
THE WATERFERN/FERN CREEK GARDENS SEWER)	
CONSTRUCTION DISTRICT INTO THE LOUISVILLE)	CASE NO. 90-336
AND JEFFERSON COUNTY METROPOLITAN SEWER)	
DISTRICT)	

O R D E R

On October 22, 1990, the Waterfern/Fern Creek Gardens Sewer Construction District ("Waterfern/Fern Creek") filed a petition for Commission approval of the merger of Waterfern/Fern Creek into the Louisville and Jefferson County Metropolitan Sewer District ("MSD").

Waterfern/Fern Creek is a sewer construction district organized pursuant to the provisions of KRS Chapter 76. Prior to 1988, the Commission asserted jurisdiction over both sewer construction districts and sanitation districts. In April of 1988, the Commission issued an opinion stating that sanitation districts organized pursuant to KRS Chapter 220 would no longer be considered under the jurisdiction of the Commission. This opinion was in large part the result of a Franklin Circuit Court case¹ which held that KRS Chapter 220, which establishes and regulates

¹ Public Service Commission v. Sanitation District No. 1 of Shelby County, No. 87-CI-1273 (Franklin Circuit Court, Division II).

sanitation districts, takes precedence over KRS Chapter 278 to the extent that conflicts between the statutes exist. The Court reasoned that, inasmuch as KRS Chapter 220 sets forth a comprehensive scheme of regulation for sanitation districts, the legislature intended that no provisions except those contained in KRS Chapter 220 were required to be met by sanitation districts.

The Commission was further persuaded that sanitation districts organized pursuant to KRS Chapter 220 should no longer be considered under its jurisdiction by the fact that the legislature failed to make specific reference to sanitation districts within KRS Chapter 278. By comparison, KRS Chapter 278 had been amended to specify that the Commission had jurisdiction over both water associations organized pursuant to KRS Chapter 273 and water districts organized pursuant to KRS Chapter 74.

The Commission finds that the reasoning in its April 1988 opinion also applies to sewer construction districts organized under KRS Chapter 76. Inasmuch as KRS Chapter 76 is specific legislation which sets forth a comprehensive scheme of regulation for sewer construction districts, it is the Commission's belief that the provisions of KRS Chapter 76 take precedence over the general regulatory provisions of KRS Chapter 278. In addition, there is the same lack of specific reference to sewer construction districts within KRS Chapter 278.

The Commission thus finds that Waterfern/Fern Creek is no longer under the jurisdiction of the Commission and therefore need not seek Commission approval of the proposed merger.

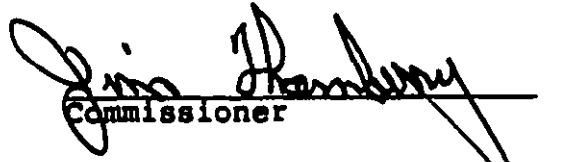
IT IS THEREFORE ORDERED that this proceeding be and it hereby
is dismissed.

Done at Frankfort, Kentucky, this 9th day of November, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director